

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

MAXWELL KREMER,

Plaintiff,

v.

REDDIT, INC.,

Defendant.

Case No. 2:21-cv-00038

Chief Judge Waverly D. Crenshaw, Jr.
Magistrate Judge Alistair E. Newbern

MEMORANDUM ORDER

This Memorandum Order addresses several pending motions in this copyright and trademark action brought by pro se Plaintiff Maxwell Kremer against Defendant Reddit, Inc., including Kremer's motion to strike and to quash Reddit's reply in support of its motion to dismiss (Doc. No. 20), Kremer's motions for sanctions (Doc. Nos. 29, 33, 34), and Reddit's motion for leave to file a response to Kremer's first motion for sanctions (Doc. No. 44). For the reasons that follow, all of these motions will be denied.

I. Relevant Background

Kremer alleges that Reddit violated his copyright and trademark rights when a photograph of Kremer's business and a comment that included the business's name, "Simcrimecom," were posted on Reddit's website. (Doc. No. 1-2, PageID# 10.) Kremer initiated this action by filing a complaint against Reddit in the Circuit Court of Putnam County, Tennessee, and Reddit timely removed the case to this Court. (Doc. Nos. 1-1-4.) Reddit filed a motion to dismiss on September 23, 2021. (Doc. No. 8.) In response, Kremer filed a motion to strike the motion to dismiss in which he accused Reddit's attorneys of "submit[ing] lies" to the Court. (Doc. No. 14, PageID# 71.) Reddit filed a motion asking the Court to construe Kremer's motion to strike as a response to the

motion to dismiss and for leave to file a proposed reply. (Doc. Nos. 16, 16-1.) The Court granted Reddit's motion to file its reply, denied Kremer's motion to strike for failure to comply with Federal Rule of Civil Procedure 12(f), and construed Kremer's motion as his response to the motion to dismiss. (Doc. No. 22.)

Kremer moved "to [s]trike and [q]uash" Reddit's reply on grounds that it "contains false statements" (Doc. No. 20, PageID# 113.) In response, Reddit argued that Kremer's motion does not satisfy the requirements of a motion to strike under Rule 12(f). (Doc. No. 27.) Kremer then moved for sanctions against Reddit's counsel under Rule 11(b), arguing that Reddit's counsel unduly prolonged this case by filing a motion to dismiss, made false statements in the motion to dismiss, and failed to respond to Kremer's discovery requests. (Doc. No. 29.) Kremer then filed another motion for sanctions, again arguing that Reddit's counsel has made false statements in various filings.¹ (Doc. No. 33.)

Reddit responded in opposition to Kremer's second motion for sanctions, arguing that Kremer has not complied with Rule 11's procedural requirements and that sanctions are not warranted under that Rule and asking the Court to award Reddit the expenses it incurred in opposing Kremer's motion for sanctions. (Doc. No. 35.) In reply, Kremer reiterates his argument that sanctions against Reddit's counsel are appropriate under Rule 11. (Doc. No. 36.)

On June 24, 2022, Reddit filed a motion for leave to file an untimely response in opposition to Kremer's first motion for sanctions. (Doc. No. 44.) Kremer has not responded in opposition to that motion.

¹ Kremer's initial motion was not signed. (Doc. No. 33.) Kremer has now filed a signed version of the motion. (Doc. No. 34.)

II. Analysis

A. Kremer's Motion to Strike Reddit's Reply

Federal Rule of Civil Procedure 12(f) provides that the Court may “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “Motions to strike are viewed with disfavor and are not frequently granted.” *Operating Eng'rs Local 324 Health Care Plan v. G & W Constr. Co.*, 783 F.3d 1045, 1050 (6th Cir. 2015); *see also Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953) (“[T]he action of striking a pleading should be sparingly used by the courts . . . [and] is a drastic remedy to be resorted to only when required for the purposes of justice.”). This reluctance to strike pleadings stems from “the practical difficulty of deciding cases without a factual record . . .,” *Brown & Williamson Tobacco Corp.*, 201 F.2d at 822, and the potentially “dilatatory and often harassing character” of a motion to strike, 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1381 (3d ed. updated Apr. 2022).

As the Court explained in its previous order denying Kremer's motion to strike Reddit's motion to dismiss (Doc. No. 22), “Rule 12(f) provides a basis for striking pleadings, not motions. *See* Fed. R. Civ. P. 12(f); *see also* Fed. R. Civ. P. 7(a) (defining ‘pleadings’ to include a complaint, a third-party complaint, an answer to a complaint, counterclaim, crossclaim, or third-party complaint, or a reply to an answer).” (*Id.* at PageID# 125.) Kremer's motion is not directed at a pleading; therefore, it does not comply with the requirements for a motion to strike and will be denied.

B. Reddit's Motion for Leave to File an Untimely Response to Kremer's First Motion for Sanctions

Kremer's first motion for sanctions was filed on October 28, 2021. (Doc. No. 29.) Under this Court's Local Rule 7.01(3), Reddit's response in opposition to that motion was due fourteen

days later. M.D. Tenn. R. 7.01(3) (response). Reddit did not file a response before that deadline and instead filed a motion seeking the Court's leave to respond on June 24, 2022 (Doc. No. 44), nearly eight months after Kremer filed the motion (Doc. No. 29).

Where a party seeks to extend a deadline after it has already passed, Federal Rule of Civil Procedure 6(b) allows extension only where "the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). The Sixth Circuit has set forth five factors to be balanced by the district court in determining whether a party's failure to act was due to excusable neglect under Rule 6(b)(1)(B):

(1) the danger of prejudice to the nonmoving party, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, (4) whether the delay was within the reasonable control of the moving party, and (5) whether the late-filing party acted in good faith.

Nafziger v. McDermott Int'l, Inc., 467 F.3d 514, 522 (6th Cir. 2006) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). The Supreme Court has held that, "[a]lthough inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect, it is clear that 'excusable neglect' under Rule 6(b) is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer Inv. Servs. Co.*, 507 U.S. at 392 (footnotes omitted) (quoting 4A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 n.13 (2d ed. 1987)).

Reddit has not argued that its failure to file a timely response to Kremer's motion for sanctions or to move for an extension of time to do so was due to excusable neglect or provided any reason for waiting nearly eight months after Kremer moved for sanctions to seek the Court's leave to file an untimely response. Because the Court has no basis for finding that Reddit's failure

to act was due to excusable neglect, Reddit's motion for leave to file an untimely response will be denied.

C. Kremer's Motions for Rule 11 Sanctions

Rule 11(b) governs attorneys' and unrepresented parties' conduct in presenting "a pleading, written motion, or other paper" to the Court. Fed. R. Civ. P. 11(b). It provides in relevant part that

[b]y presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[] . . . the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law[.]

Fed. R. Civ. P. 11(b)(2). Rule 11(c)(1) further provides that "[i]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1).

The Sixth Circuit has held that "Rule 11 sanctions may be awarded only if [an attorney's or party's] conduct in the litigation was objectively unreasonable" or if the attorney or party "did not have a reasonable basis for making [his or her] claim[.]" *Montell v. Diversified Clinical Servs., Inc.*, 757 F.3d 497, 510 (6th Cir. 2014) (first citing *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 517 (6th Cir. 2002); and then citing *Tropf v. Fidelity Nat'l Title Ins. Co.*, 289 F.3d 929, 939 (6th Cir. 2002)). "The conduct of counsel who are the subject of a sanction request is measured by an objective standard of reasonableness under the circumstances." *Merritt v. Int'l Ass'n of Machinists & Aerospace Workers*, 613 F.3d 609, 626 (6th Cir. 2010); *see also* Fed. R. Civ. P. 11 advisory committee's note to 1983 amendment ("The standard is one of reasonableness under the circumstances."). "The court is expected to avoid using the wisdom of

hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted." Fed. R. Civ. P. 11 advisory committee's note to 1983 amendment.

As Reddit correctly identifies in its opposition to Kremer's second motion for sanctions, Rule 11's safe harbor provision provides that "[a] motion for sanctions . . . must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper . . . is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." Fed. R. Civ. P. 11(c)(2). This "safe harbor provision [is] designed to protect the person against whom sanctions are sought and forestall unnecessary motion practice[.]" 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1337.2 (4th ed. updated Apr. 2022); *see also* Fed. R. Civ. P. 11(c) advisory committee's note to 1993 amendment ("These provisions are intended to provide a type of 'safe harbor' against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation."). There is no indication in the record that Kremer served his motions for sanctions on Reddit's counsel more than twenty-one days before filing them, as Rule 11(c) requires, and his motions may be denied on that basis alone.

Even if Kremer had complied with Rule 11(c)'s procedural requirements, he has not shown that sanctions are warranted here. Kremer argues that sanctions are appropriate because Reddit's counsel delayed the resolution of this case by filing a motion to dismiss "instead of advising it's [sic] client . . . to settle out of court" and by failing to respond to Kremer's requests for Reddit's financial information. (Doc. No. 29, PageID# 160.) He states that Reddit's motion to dismiss contains a "false suggestion that Reddit was not a commercial entity" and that Reddit falsely

claimed that the “complaint lacks factual allegations.” (*Id.* at PageID# 161.) He further argues that Reddit falsely stated in its response in opposition to Kremer’s motion for summary judgment (Doc. No. 31) that Kremer has not adequately identified the copyrighted material at issue in this case. (Doc. No. 34.)

There is no requirement that a defendant attempt to settle a case before filing a motion to dismiss under Rule 12. *See* Fed. R. Civ. P. 12. This Court’s Local Rule 16.02(b) provides that a Judge “may refer the case for mediation, a judicial settlement conference, or other nonbinding method of alternative dispute resolution . . . with or without the consent of the parties[,]” M.D. Tenn. R. 16.02(b) (alternative dispute resolution proceedings), but the Court has not made such a referral in this case. Accordingly, Kremer is not entitled to sanctions on this ground.

Kremer’s argument that Reddit should be sanctioned for failure to participate in discovery also lacks merit. The Court has not yet entered a scheduling order governing discovery in this case, *see generally* Fed. R. Civ. P. 16; M.D. Tenn. R. 16.01 (case management), and there is no indication that Kremer and Reddit have agreed to begin discovery under Rule 26(f). Fed. R. Civ. P. 26(f). Accordingly, to the extent Kremer seeks sanctions against Reddit for failure to respond to his requests for Reddit’s financial information, that request is premature. *See Wada v. U.S. Secret Serv.*, 525 F. Supp. 2d 1, 11 (D.D.C. 2007) (finding that pro se plaintiff’s attempts to pursue written discovery were premature where parties had not agreed to conduct discovery and court had not entered scheduling order).

Contrary to Kremer’s characterization, Reddit’s motion to dismiss does not assert that Reddit is not a commercial entity. Rather, Reddit argues that Kremer has not plausibly alleged that Reddit used his trademark in commerce, which is one of the elements of a trademark infringement claim. (Doc. No. 9.) This statement, along with the others Kremer cites as “false” and “fraudulent,”

are reasonable legal arguments made to defend against Kremer's claims and do not violate Rule 11. See Fed. R. Civ. P. 11 advisory committee's note to 1983 amendment (stating that, in deciding Rule 11 motions, courts should consider factors including "whether the pleading, motion, or other paper was based on a plausible view of the law"); see also *Young v. Overly*, No. 3:16-cv-00062, 2017 WL 4355561, at *4 (E.D. Ky. Sept. 29, 2017) ("A legal argument, even if ultimately ruled against, does not bring sanctions, and is simply how the legal system operates."), *aff'd*, No. 17-6242, 2018 WL 5311408 (6th Cir. July 2, 2018); cf. *Gilreath v. Clemens & Co.*, 212 F. App'x 451, 464 (6th Cir. 2007) (affirming district court's grant of Rule 11 sanctions where plaintiff's attorney "had cited no legal authority in support of his position"). To the extent Kremer disagrees with the arguments in Reddit's motion to dismiss, the way to register that disagreement is by filing a response in opposition to the motion, not by seeking sanctions. Kremer's motions for sanctions (Doc. Nos. 29, 33, 34) will be denied.

Reddit has asked the Court to order Kremer to pay the attorney's fees Reddit incurred in responding to his motions for sanctions. (Doc. No. 35.) As Reddit's request implies, Rule 11 also "applies to pro se plaintiffs and permits sanctions by the Court when the asserted action is frivolous or without evidentiary support." *Young*, 2017 WL 4355561, at *5 (citing *Graham v. Liberty Mut. Ins. Co.*, No. 1:08-CV-299, 2009 WL 1034942 at *4 (E.D. Tenn. Apr. 17, 2009)). Further, 28 U.S.C. § 1927 provides that an individual "who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. While the Court declines to sanction Kremer at this time, Kremer is cautioned that he may be subject to sanctions if he makes further filings that the Court deems to have been "presented for any improper purpose[,]" unsupported by fact, or frivolous. Fed. R. Civ. P. 11(b)(1)–(4).

III. Conclusion

For these reasons, Kremer's motion to strike Reddit's reply (Doc. No. 20) and motions for sanctions (Doc. Nos. 29, 33, 34), and Reddit's motion for leave to file an untimely response (Doc. No. 44) are DENIED.

It is so ORDERED.


ALISTAIR E. NEWBERN
United States Magistrate Judge